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It is accordingly ordered that the Chesapeake & Ohio Railway Company proceed with practical dispatch to erect, at its own expense, a suitable and proper bridge, for passengers and vehicles, across James River at a convenient point opposite to, and connecting with, Maidens Station. And the Commission will enter such further orders in this proceeding as may be necessary and essential to the proper and reasonable carrying out of its determination herein.

VIRGINIA STATE CORPORATION COMMISSION.

RICHMOND, VA.

COMMONWEALTH OF VIRGINIA, at the relation of the STATE CORPORATION COMMISSION V. AMERICAN CAN COMPANY.*

July 15, 1905.

1. PUBLIC SERVICE CORPORATIONS—*Charter Fees Required of in Virginia.*—Secs. 37 and 38, *Tax Bill, Va. Code 1904*, p. 2214—The object of secs. 37 and 38 of the Tax Bill, Va. Code, 1904, p. 2214, is that public service corporations, coming into being, whether created under the laws of Virginia or by entering the state as a foreign corporation from another state, shall pay a larger charter fee than ordinary trading companies. And a foreign corporation authorized by its charter to act as an ordinary trading company, and in addition, to act as a public service corporation, must, when it obtains from the State Corporation Commission authority to do business in this state, pay the charter fee required of public service corporations, although sec. 163 of the Virginia Constitution of 1902, forbids foreign corporations to exercise in this state the functions of public service corporations.

2. CONSTITUTIONAL LAW—*Statutes—Corporation Commission*—A statute will not be declared unconstitutional unless it is plainly and clearly so and is not capable of any construction which would make it conform to the Constitution; and this rule is especially applicable to the State Corporation Commission, which has only to a limited extent the functions of a court.

3. CONSTITUTIONAL LAW—*Foreign Corporations—Sec. 37 of the Tax Bill, Va. Code 1904*, p. 2214—*Sec. 163, Cons. 1902*—It is not the object of sec. 37 of the Tax Bill, Va. Code 1904, p. 2214, fixing the fees required of corporations, to confer upon foreign corporations authority to exercise the functions and powers of public service corporations, and therefore that statute is not unconstitutional, as granting foreign corporations powers prohibited by sec. 163 of the Constitution of 1902.

* Syllabus by C. B. GARNETT.

The opinion states the case.

William A. Anderson, Atty. Gen'l. for the Commonwealth.

Christian & Christian, for the defendant company.

HON. BEVERLY T. CRUMP, Chairman of the Commission.

In this proceeding, the defendant, the American Can Company, was cited before the Commission to show cause why a fine should not be imposed upon it in accordance with the provisions of section 1105 of the Code of Virginia as amended by an Act of the General Assembly approved May 15, 1903, on the ground that the defendant company was transacting business in this State under its charter without having obtained a license or certificate of authority from the Commission as required by section 1104 of the Code, as amended by the act aforesaid.

On the hearing, it appeared that the defendant company was prepared to file with the Commission copies of its charter and duplicate copies of a power of attorney, as required by section 1104, and to pay a charter fee of \$600.00, and that it had not obtained a certificate of authority or license because the Commission had ruled that it should pay a charter fee of \$3,000.00.

An examination of the charter discloses the fact that the defendant company was created under the laws of the State of New Jersey in the year 1901 with an authorized maximum capital stock of \$88,000,000.00. The company, in addition to having power in its charter to manufacture and deal in cans, packages and metal wares, is also authorized to operate plants for producing or furnishing power, water, gas or electricity and also "to acquire, construct, maintain and operate railroads, telegraph lines and canals not in the state of New Jersey." This gives the corporation, unquestionably, power, not only to exercise the franchises of a public service corporation in several different lines, but also to operate a railroad.

Section 37 of the new Revenue Law (Va. Code 1904, p. 2214) provides as follows:

"Every domestic corporation authorized by its charter to exercise the powers of a transportation or transmission company, or to own, lease, construct, maintain and operate a public service line or road of any kind, upon the granting or extension of its charter, and every foreign corporation authorized by its charter to exer-

cise the powers of a transportation or transmission company, or to own, lease, construct, maintain and operate a public service line or road of any kind, when it obtains from the State Corporation Commission a certificate of authority to do business in this State, shall pay a fee into the treasury of the State of Virginia to be ascertained and fixed as follows:"

The statute then contains a table of the charter fees to be paid, graded according to the maximum capital stock authorized by the terms of the charter. According to this table, the charter fee for this corporation, having a maximum authorized capital of \$88,000,-000.00, is fixed at \$3,000.00.

Section 38 (Va. Code 1904, p. 2215) then provides that every domestic corporation and every foreign corporation, other than those mentioned in section 37, shall pay a charter fee according to a fixed table which makes the fees much lower in amount than the charter fees fixed in section 37.

The intent of the statute is, that the public service corporations coming into being, whether by being created under the laws of Virginia or by entering the State as a foreign corporation from another state, shall pay a larger charter fee than ordinary industrial joint stock companies.

We think it is manifest that the charter of the American Can Company brings it within the terms of section 37 of the Revenue Law and that, therefore, it should pay a fee of \$3,000.00 and not the smaller fee under section 38.

Our attention was called to section 163 of the Constitution and it was claimed in argument that section 37 of the Revenue Law, as applied to foreign corporations, was in violation of this section of the Constitution.

Section 163 of the Constitution provides as follows:

"No foreign corporation shall be authorized to carry on, in this State, the business, or to exercise any of the powers or functions, of a public service corporation, or be permitted to do anything which domestic corporations are prohibited from doing, or be relieved from compliance with any of the requirements made of similar domestic corporations by the Constitution and laws of this state, where the same can be made applicable to such foreign corporation without discriminating against it."

This section of the Constitution seems to place an inhibition upon the Legislature to grant authority to a foreign corporation to exercise the powers of a public service corporation of any character in Virginia; and it may be, that, if the object of section 37 of the Revenue Law was to confer such powers upon a foreign corporation, it would be in violation of this section of the Constitution

It is a well settled principle of law that a statute will not be declared unconstitutional unless it is plainly and clearly so and is not reasonably capable of any construction which would make it conform to the Constitution. This principle should be especially recognized by a tribunal such as the State Corporation Commission, which has only, to a limited extent, the functions of a court and is scarcely expected to declare a law unconstitutional unless it is most plainly so.

We do not think that the object of the Revenue Law was to confer upon foreign corporations authority to exercise any particular power granted in its charter. Being a revenue statute, its purpose is to fix the various amounts, in the shape of taxes or otherwise, which should be paid into the State treasury by the persons and corporations and under the varying circumstances named in the statute. The Legislature may very well have had in mind that, owing to the larger operations and greater importance of transportation and transmission companies and other public service corporations coming into Virginia from another state, they should pay a larger charter fee, although they were to exercise in Virginia only such franchises as would come under the head of ordinary trading companies and could not exercise any of the powers of a public service corporation.

It is a well-known fact that a large number of ordinary business corporations, such as this defendant company, have in their charters very extensive powers in connection with the operation of transportation and transmission companies. This being the case, the Legislature may very well have enacted that a foreign corporation, having powers of this character in its charter, should be required to pay a larger fee than one not having such powers, although these powers could be exercised in some other state, or states, and not in Virginia.

Without discussing this matter further, this is one view which occurs to us as reasonable, and according to which the statute is made to conform to the terms of the Constitution, if it be plain that the Constitution does forbid any foreign corporation, under any circumstances, to be authorized to exercise the powers of a transportation or a transmission company or the powers of any other public service corporation, in Virginia.

In the case of *American Surety Co. v. Commonwealth*, 102 Va. 841, it was held by our Court of Appeals that section 1104 as amended, applied to every incorporated company doing business in the state and embraced foreign as well as domestic corporations and that all foreign corporations were required, as a condition precedent to doing business in this State, to pay the charter fee required by law.

Under all the circumstances of this case, we are of opinion that, under the statute, the defendant company should have paid a charter fee of \$3,000.00 and not the smaller charter fee of \$600.00 and that, therefore, their offer to pay the charter fee of \$600.00 furnishes no valid excuse for having done business in the state without a license or certificate of authority from the Commission and a fine should be imposed upon it for so doing.

NOTE. — This case and the case of *COMMONWEALTH v. STANDARD OIL COMPANY*, involving almost the same point, have been taken by appeal to the Supreme Court of Appeals of Virginia.